

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

STATE OF INDIANA, et al.,)	
)	
the State,)	
)	
vs.)	CASE NO. 1:13-cv-1612-WTL-TAB
)	
INTERNAL REVENUE SERVICE, et al.)	
)	
Defendants.)	

PLAINTIFFS' JOINT NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs State of Indiana and 39 public school corporations respectfully submit this Joint Notice of Supplemental Authority in support of their Motion for Summary Judgment and in opposition to the Defendants' Motion for Summary Judgment. On September 30, 2014, the United States District Court for the Eastern District of Oklahoma issued an Order in *Oklahoma v. Burwell*, No. CIV-11-30-RAW (E.D. Okla. Sept. 30, 2014) (copy attached as Attachment 1), granting summary judgment to Oklahoma because "the IRS Rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law[.]" *Id.* at 20. The court considered the analysis provided by the D.C. Circuit in *Halbig v. Burwell*, 758 F.3d 390 (D.C. Cir. 2014)¹, and the Fourth Circuit in *King v. Burwell*, 759 F.3d 358 (4th Cir. 2014), and found the D.C. Circuit to be more persuasive. *Oklahoma v. Burwell*, No. CIV-11-30-RAW, slip op. at 10. Thus, it rejected the statutory interpretation arguments raised by the Federal Government and found instead that the plain language of the statute must control: "'State' cannot mean the federal

¹ The court acknowledged that the *Halbig* decision has been vacated pending en banc review, *Halbig v. Burwell*, No. 14-5018, 2014 WL 4627181 (D.C. Cir. Sept. 4, 2014), but noted that the court was still permitted to consider the decision's analysis. *Oklahoma v. Burwell*, No. CIV-11-30-RAW, slip op. at 10 n.14.

government. This definition is dispositive when combined with the interpretive hurdle presented by the phrase ‘established by.’” *Id.* at 14.

WHEREFORE, Plaintiffs respectfully request that the Court consider this supplemental authority, which was not available at the time that the parties concluded their briefing on the Motions for Summary Judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October, 2014, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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